

ANTIETAM NATIONAL BATTLEFIELD

SEPTEMBER 22 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2565]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2565) to remove certain restrictions on land acquisition for Antietam National Battlefield, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 2565 is to remove land acquisition restrictions on the Antietam National Battlefield.

BACKGROUND AND NEED

Antietam National Battlefield in Sharpsburg, Maryland is the site of the bloodiest day of fighting in the Civil War. It is one of the few Civil War battlefields virtually untouched since the War. This battlefield, however, is threatened by increasing pressure to develop nearby farmland. One of the most significant battlefield sites at Antietam, the cornfield, where more than half of the casualties occurred, is totally unprotected from development.

The Antietam National Battlefield was established in 1960. While its boundaries now include 3,246 acres, the enabling legislation allowed the Secretary to purchase fee title to only 600 acres. Currently the United States owns about 815 acres of fee land within the Battlefield and approximately 1,274 acres are retained in easements. By 1974 the federal government had already purchased the 600 acres it was authorized to purchase.

S. 2565 would amend the Act of April 22, 1960, which established the Battlefield, by striking out language that limits authority to acquire lands in fee by purchase to 600 acres. The measure would also amend the National Parks and Recreation Act of 1978, which expanded the Battlefield boundary to 3,246 acres, by striking out language that restricts acquisition within the revised boundary only to scenic easements.

LEGISLATIVE HISTORY

Senators Sarbanes and Mikulski introduced S. 2565 on June 23, 1988. The Subcommittee on Public Lands, National Parks and Forests conducted a hearing on August 2, 1988.

At the business meeting on Wednesday, September 14, 1988, the Senate Committee on Energy and Natural Resources ordered S. 2565, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on Wednesday, September 14, 1988, by unanimous vote of a quorum present, recommends that the Senate pass S. 2565, as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum
Mr. Melcher
Mr. Bradley
Mr. Bingaman
Mr. Wirth
Mr. Fowler
Mr. Conrad
Mr. McClure
Mr. Hatfield*
Mr. Weicker*
Mr. Domenici
Mr. Wallop
Mr. Murkowski*
Mr. Nickles
Mr. Hecht
Mr. Evans

NAYS

*Indicates voted by proxy.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2565. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2565, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 2565 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 7, 1988.

HON. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 2565, a bill "To remove certain restrictions on land acquisition for Antietam National Battlefield."

We recommend the enactment of S. 2565. Legislation along the lines of S. 2565 is most desirable to protect the integrity of the battleground at Antietam, a national historical area considered to be the least developed of all those Civil War battlefield sites administered by the National Park Service.

S. 2565 would amend the Act of April 22, 1960, which authorized the purchase of land within the battlefield, by striking out language that limits authority to acquire lands in fee by purchase to 600 acres. The bill would also amend the National Parks and Recreation Act of 1978, which expanded the battlefield boundary to 3,246 acres, by striking out language that restricts acquisition within the boundary only to scenic easements.

The effect of S. 2565 would be to provide the National Park Service with one more tool—purchase in fee simple—with which to protect land within the existing boundary of the battlefield. This ability to purchase lands in fee is similar to the authority available in most other parks. Moreover, we intend to limit our use of this authority to purchase from willing sellers.

We wish to make it clear that the bill does not expand the existing statutory boundary, nor do we believe a boundary expansion is necessary. Rather, protection of lands within the boundaries of Antietam, including fee purchase where appropriate, is the top priority of the National Park Service, and is consistent with our policy of protecting existing areas of the national park system before we seek additional sites.

The battle of Antietam took place within an area which historians estimate to have been about 8,000 acres. The Antietam Nation-

al Battlefield boundary itself contains only 3,246.44 acres, of which 815.54 acres is owned by the Federal Government. Hence, the Service owns only about one-tenth of the original battlefield. The area within the battlefield's legislative boundary includes those areas which played the most significant part in the day's conflict. However, even within that boundary, the Service is limited by legislation to the purchase of only 600 acres in fee. Other key areas within the existing boundary for the battlefield must be protected by the receipt of donated properties and interests in properties, or the purchase of scenic easements. We have 1,274 acres in scenic easements.

At the time of the battle, aside from the rural community of Sharpsburg, the area was agricultural or forested. The 1960 legislation that authorized land acquisition and agreements "to preserve, protect, and improve" the battlefield had as its fundamental purpose the maintenance of the site "in, or its restoration to, substantially the condition in which it was at the time of the battle of Antietam." The legislative restrictions which limit fee ownership lands in the park, however, do not authorize the National Park Service to acquire the necessary lands critical to protecting the historic and visual quality of the battlefield. Times have changed since acquisition was limited to easements. Development pressures are growing in areas closer to the battlefield each year.

Antietam National Battlefield was established on August 30, 1890. On May 14, 1940, legislation was passed which gave the Secretary of the Interior authority to accept donated lands or to purchase land with donated funds.

On April 22, 1960, an Act was passed that set an 1,800-acre ceiling for the park. The Act provided that 600 acres of these lands could be acquired in fee by purchase. Purchase in fee to the limit of 600 acres, authorized by this Act, was completed in 1974. In 1978, the boundary was expanded to 3,246.44 acres, but only scenic easement acquisitions were allowed under that legislation. Currently, the park contains 815.54 acres in fee and 1,274.35 acres in scenic easement which have been acquired through purchase, donation, and transfer.

Since 1974, the Service has been unable to purchase fee title to any land because of the legislative ceiling of 600 acres. Currently, there are several significant areas of battle engagement integral to the battlefield which remain in private ownership, and may, we believe, ultimately be acquired in fee. These areas include the Cornfield, the Westwoods, the Northwoods, the Eastwoods, and the Roulette Farm. S. 2565 would give the National Park Service needed flexibility to negotiate with landowners within the boundary.

Our experience with scenic easements at Antietam has not been entirely satisfactory in terms of resource protection or the interests of landowners. Prior to 1979, several easements were acquired with relatively imprecise restrictions on how the land could be used. These easements were designed to reduce acquisition costs, but they did not clearly prohibit subdivisions, additional residential development, and other changes in land use that would conflict with our objectives of restoring and interpreting the historic scene of the battle.

A land protection plan for Antietam approved in 1983 recognized the need to acquire stronger easements to assure adequate protection of the battlefield. This plan was based on the existing constraints on purchasing additional land in fee. However, in many cases at Antietam, it may be more cost-effective to acquire property in fee than to acquire the additional easements that are needed to protect the resource.

Authority to acquire additional lands in fee would give us the option of allowing owners to reserve certain rights of use and occupancy for a fixed term, or we can lease fee-owned lands for agricultural purposes that are consistent with the historic scene of the battle.

We do not at this time have an estimate of what, if any, additional costs will be associated with purchasing more land in fee instead of acquiring additional easement interests. We are confident that this additional authority will help us to a better job of carrying out the purposes of the park and cooperating with landowners.

There is no statutory ceiling on appropriations for land acquisition at Antietam, and future acquisitions will be funded from amounts made available in annual budgets. However, owing to the Federal budget deficit and the backlog in unfunded park land acquisition, we can make no commitment as to when funds would be requested for additional fee or easement acquisition.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the Administration's standpoint.

Sincerely,

SUSAN RECCE,
Acting Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, S. 2565, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT To provide for the protection and preservation of the Antietam Battlefield in the State of Maryland, approved April 22, 1960

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to acquire such lands and interests in land and to enter into such agreements with the owners of land on behalf of themselves, their heirs and assigns with respect to the use thereof as the Secretary finds necessary to preserve, protect and improve the Antietam Battlefield comprising approximately 1,800 acres in the State of Maryland and the property of the United States thereon, to assure the public a full and unimpeded view thereof, and to provide for the maintenance of the site (other than those portions thereof which are occupied by public buildings and monuments and the Antietam National Cemetery) in, or its restoration to, substantially the condition in which it was at the

time of the battle of Antietam. [Not more than 600 acres of land, however, shall be acquired in fee by purchase or condemnation, but neither this limitation nor any other provision of law shall preclude such acquisition of the fee title to other lands and its immediate reconveyance to the former owner with such covenants, restrictions, or conditions as will accomplish the purposes of this Act: *Provided*, That the cost to the Government of any such transaction shall not exceed the reasonable value of the covenants, restrictions, or conditions thereby imposed on the property.] Any acquisition authorized by this Act may be made without regard to the limitation set forth in the proviso contained in the Act of May 14, 1940 (54 Stat. 212). The Secretary shall report to the Congress at least once each year on any acquisition made or agreement entered into under this Act.

AN ACT To authorize additional appropriations for the acquisition of lands and interests in lands within the Sawtooth National Recreation Area in Idaho

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "National Parks and Recreation Act of 1978".

* * * * *

ANTIETAM NATIONAL BATTLEFIELD

SEC. 319. (a) In furtherance of the purposes of the Act entitled "An Act to provide for the protection and preservation of the Antietam Battlefield in the State of Maryland", approved April 22, 1960 (74 Stat. 79), and other Acts relative thereto, the Secretary is hereby authorized to acquire [only scenic easements over] the additional lands generally depicted on the map entitled "Boundary Map, Antietam National Battlefield, Washington County, Maryland," numbered 302-80.005-A and dated June 1977.

(b) The Antietam National Battlefield Site established pursuant to such Act of April 22, 1960, [including only scenic easements acquired pursuant to subsection (a) of this section,] is hereby redesignated the "Antietam National Battlefield". The boundaries of such battlefield are hereby revised to include the area generally depicted on the map referenced in subsection (a) of this section, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

* * * * *

IMPROVING FEDERAL MANAGEMENT OF LANDS ON
ADMIRALTY ISLAND, ALASKA

SEPTEMBER 22 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2596]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 2596) to improve Federal management of lands on Admiralty Island, Alaska, having considered the same, reports favorably thereon with an amendment and recommends that the act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE AND PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the "Admiralty Island National Monument Land Management Act of 1988".

(b) PURPOSE.—The purpose of this Act is to improve Federal management of lands on Admiralty Island, Alaska, as provided herein.

SEC. 2. FINDINGS.

The Congress hereby finds that—

(a) Admiralty Island National Monument, Alaska, is an area of unparalleled natural beauty containing multiple values including, but not limited to, fish, wildlife, forestry, recreational, subsistence, educational, wilderness, historical, cultural, and scenic values of enduring benefit to the Nation and the Native peoples residing therein; and

(b) land management and Federal administration of Admiralty Island National Monument may be enhanced by Federal land acquisitions, through land exchanges or otherwise, and by cooperative agreements between the Federal Government and the indigenous residents of the Island, the people of the City of Angoon and the Native Village Corporation, Kootznoowoo, Incorporated.

SEC. 3. LAND ACQUISITION AND EXCHANGE.

(a) Section 506(a) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, as amended) is hereby amended by adding at the end thereof the following new paragraph:

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"(9)(A) The Secretary is authorized and directed to: Enter into such cooperative agreements and agreements for land acquisitions, through exchange or otherwise, with Kootznoowoo as are deemed necessary by the Secretary to carry out the purposes specified in sections 101 and 503 of this Act and to improve the management of Federal lands on Admiralty Island.

"(B) The Secretary shall make every effort to complete agreements within eighteen months of the date of enactment of this paragraph.

"(C) The Secretary shall report to Congress before the end of such eighteen-month period on the status and results of negotiations with Kootznoowoo. The report shall include, but not be limited to, any Kootznoowoo properties proposed to be acquired by the United States, any Federal lands or other compensation to be offered in exchange, and the text of any proposed or executed agreements.

"(D) Any lands on Admiralty Island acquired by the United States pursuant to this paragraph shall be added to and incorporated within the Admiralty Island National Monument.

"(E) The inability of the Secretary and Kootznoowoo to reach agreement shall not preclude subsequent negotiations at any time for the purposes of land exchanges or other matters.

"(F) Enactment of this paragraph shall not create any right or cause of action by Kootznoowoo, Incorporated, or any other party against the United States."

SEC. 4. LAND SELECTION CONSOLIDATION.

(a) Section 506(a)(5) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, as amended) is hereby amended by adding at the end thereof the following new subparagraphs:

"(C) In order to consolidate Federal land ownership and improve management of land and timber resources in the area, lands within the sale area and lands between such sale area and lands lying to the east of such sale area which have been or may be conveyed to Kootznoowoo pursuant to this paragraph (5), and not otherwise committed by contract, shall be specifically considered by the Secretary for exchange with Kootznoowoo, Incorporated. Nothing in this section shall affect valid land selections which the State of Alaska has filed with the Federal Government under Public Law 85-508.

"(D) The Secretary of Agriculture may require as a condition precedent to any exchange of lands with Kootznoowoo, Incorporated, pursuant to this Act that any party (other than the United States) owning the subsurface estate in lands proposed to be transferred to the United States by Kootznoowoo, Incorporated, in furtherance of such exchange agree to transfer such subsurface estate to the United States in exchange for the subsurface estate in the lands proposed to be transferred to Kootznoowoo, Incorporated, in furtherance of such exchange.

"(E) Any transfers pursuant to subparagraphs (C) and (D) of this paragraph shall be subject to valid existing rights.

"Nothing in subparagraphs (C) and (D) shall create a right or cause of action by Kootznoowoo, Incorporated, or any other party against the United States."

SEC. 6. ADMINISTRATIVE PROVISIONS.

(a) Section 703(a)(1) of the Act is amended by deleting the words "Admiralty Island National Monument Wilderness" and inserting in lieu thereof "Kootznoowoo Wilderness".

(b) Lands transferred, exchanged, or granted pursuant to provisions of section 506(a) of the Act shall be deemed to have been transferred, exchanged, or granted as of January 9, 1981: *Provided*, That this effective date not be construed in any way so as to obligate any payments by the United States, or as to require the escrow of any funds which may have been generated on such lands prior to December 2, 1980.

(c)(1) All rights, title and interests to that portion of the approximately 17.34 acres comprising the Angoon Administrative Site which, pursuant to paragraph (c)(2) of this section, the Secretary dedicates for uses related to the administration of the Tongass National Forest, are hereby confirmed in the United States, said parcel being a valid existing Federal administrative site as referenced in section 506(a)(3)(A) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, as amended). Said administrative site is located on Admiralty Island in Township 50 South, Range 68 East, Section 31, C.R.M. and Township 50 South, Range 67 East, Section 36, C.R.M.

(2) Within one year of enactment of this paragraph, the Secretary of Agriculture shall adjust, and resurvey as necessary, the boundaries of the Angoon Administrative Site to include only that portion of the site described as follows:

(A) those lands which lie within the following described boundaries, comprising 4.68 acres more or less:

Beginning at Corner 1, also Corner 9 of U.S. Survey No. 3756;
Thence N 45 degrees 30 minutes W, 540.79 feet to Corner 2,
Thence N 45 degrees 00 minutes E, 376.60 feet to Corner 3,
Thence S 45 degrees 30 minutes E, 540.79 feet to Corner 4,
Thence S 45 degrees 00 minutes W, 376.60 feet to Corner 1,
also Corner 9 of U.S. Survey No. 3756, the point of beginning.

(B) those lands which lie within that area adjoining the northeastern boundary of the 4.68 acre tract and the mean high tide line of Kootznoowoo Inlet, subject to a perpetual public easement for the existing Angoon-Killissnoo Road; and

(C) an easement for road and utility access to the 4.68 acre tract from the western or southern boundary of the 17.34 acre site. To the maximum extent feasible, the Secretary shall locate said easement to connect to and follow the existing right of way for Relay Road, which lies between Lots 1 and 6 of the Samuel G. Johnson subdivision. Said easement shall be at a precise location and of dimensions which the Secretary determines is reasonably necessary for present and projected Federal uses of the site related to administration of the Tongass National Forest. Said easement shall be subject to any valid existing rights except those of Kootznoowoo, Inc. and, provided further, the easement shall not be located on any lands conveyed by Kootznoowoo, Inc. to a third party prior to June 1, 1988 without the express consent of such party: *Provided*, That the Secretary shall exclude from the lands so retained those lands which were occupied on June 1, 1988 by structures and improvements that were not constructed by or for the United States including easements related thereto, or which were constructed by or for the United States but which the Secretary determines are not reasonably necessary for present or projected Federal uses related to the administration of the Tongass National Forest: *Provided further*, That the Secretary shall not exclude from the 4.68 acre tract any lands occupied by existing power or utility lines or poles, and the lands so occupied shall be subject to an easement to allow for their continued use, maintenance, and repair.

(3) Title to all lands within the 17.34 acre administrative site which are not included by the Secretary in the adjusted area provided by paragraph (c)(2) shall be conveyed by the Secretary of Agriculture by quitclaim deed to Kootznoowoo, Incorporated.

(4) The provisions of paragraphs (c)(2) and (c)(3) are subject to the condition precedent that Kootznoowoo, Incorporated executes an appropriate written agreement acceptable to the United States Attorney for the District of Alaska to dismiss, with prejudice, the pending litigation entitled *Kootznoowoo, Inc. v. United States Department of Agriculture, Forest Service, Civil No. A84-575*, in the United States District Court for the District of Alaska, and agrees therein that Kootznoowoo, Incorporated and the United States shall each bear their own costs of said litigation, including attorney's fees.

PURPOSE OF THE MEASURE

The purpose of H.R. 2596 is to improve the management of the Admiralty Island National Monument by encouraging cooperative efforts to address land management and acquisition issues involving the Forest Service, the Federal land manager, and Kootznoowoo, Inc., the Alaska Native Claims Settlement Act (ANCSA) corporation for the village of Angoon. The bill also resolves litigation concerning the ownership of the Angoon Administrative Site.

BACKGROUND AND NEED

Admiralty Island—known as “Kootznoowoo” or “Fortress of the Bears” to its Tlingit Indian residents—is approximately one million acres in size, and is the largest remaining predominantly wilderness island in Southeast Alaska. A national treasure of unparalleled quality, Admiralty Island is home to over 1,000 brown bears and over 2,500 bald eagles, densest populations of these species in North America. The Island spawns over 2 million salmon annually,

supports an array of other wildlife from Sitka deer to various marine mammals, and contains rich timber, water and mineral, recreational and subsistence resources.

In addition to its natural values, the Island provides historic and cultural attributes of unique and irreplaceable character. In 1980, the Alaska Natural Interest Lands Conservation Act (ANILCA) recognized these multiple values by confirming most of Admiralty Island as a National Monument administered by the Forest Service and designating much of the Monument as a unit of the National Wilderness Preservation System.

The only permanent settlement on Admiralty Island is the historic Tlingit Indian village of Angoon (population 600), whose people are represented by Kootznoowoo, Inc. The land selection process under ANCSA and ANILCA has led to management conflicts between the residents and the U.S. Forest Service.

The purpose of this bill is to improve the management of Federal lands on Admiralty Island, and to build a lasting relationship of cooperation between the U.S. Forest Service, the people of Angoon, and Kootznoowoo, Inc. The Congressional directions and authorizations in this bill are intended to provide both the direction and stimulus to resolve some of the key issues that have hindered the proper management of Admiralty Island lands and resources.

SUMMARY OF MAJOR PROVISIONS

There are three major elements of the bill. The first establishes a process by which the Secretary of Agriculture is authorized and directed, over the next eighteen months, to engage in discussions with Kootznoowoo, Inc. for purposes of entering into cooperative management and land acquisition agreements intended to consolidate Kootznoowoo's land holdings and improve the management of Federal lands on Admiralty Island.

The second provides for the Secretary to "specifically consider" consolidation of Federal and Native land and timber interests on Prince of Wales Island, the area in which Kootznoowoo, Inc. has made land selections under ANILCA as an alternative to selections on Admiralty Island itself. The possibility exists that U.S. Forest Service and Kootznoowoo, Inc. parcels can be consolidated through exchange, resulting in improved resource management for both parties. Such exchanges are encouraged by the bill, but are not mandated.

Finally, the bill addresses miscellaneous administrative issues, including the consolidation, on a single date, of multiple conveyance dates for Kootznoowoo, Inc.'s land selections under ANCSA, the settlement of litigation over the ownership of the lands used by the U.S. Forest Service as an administrative site, and the change in the name of the Admiralty Island Wilderness Area to "Kootznoowoo Wilderness" to better reflect its Native heritage.

LEGISLATIVE HISTORY

H.R. 2596 passed the House on September 28, 1987 by a vote of 385-19. A Senate companion measure, S. 2676, was introduced by Senators Murkowski and Fowler on August 1, 1988. A hearing has

not been held before the Subcommittee on Public Lands, National Parks and Forests.

At the business meeting on Wednesday, September 14, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 2596, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on Wednesday, September 14, 1988, by unanimous vote of a quorum present, recommends that the Senate pass H.R. 2596 if amended, as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum
Mr. Melcher
Mr. Bradley
Mr. Bingaman
Mr. Wirth
Mr. Fowler
Mr. Conrad
Mr. McClure
Mr. Hatfield*
Mr. Weicker*
Mr. Domenici
Mr. Wallop
Mr. Murkowski*
Mr. Nickles
Mr. Hecht
Mr. Evans

NAYS

* Indicates voted by proxy.

COMMITTEE AMENDMENTS

Prior to the Committee's consideration of H.R. 2596, Senators Murkowski and Fowler introduced a companion measure, S. 2676. Also prior to the Committee's consideration of the bill, the Forest Service and Kootznoowoo, Inc. negotiated amendatory language that would resolve litigation over the ownership of a tract of land located within the Village of Angoon that is used by the service as an administrative site for the Monument. This proposed amendment was adopted by the Committee and incorporated into S. 2676. S. 2676 was then adopted by the Committee as a substitute for H.R. 2596.

There are several differences between the Committee reported substitute and H.R. 2596. Therefore, a discussion of those differences, as well as the other provisions of the Committee reported bill, have been incorporated into the "Section-by-Section Analysis" below.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE AND PURPOSE

This section is self-explanatory.

SECTION 2. FINDINGS

This section recognizes the outstanding natural and cultural values of Admiralty Island and notes the need for the Secretary of Agriculture and Kootznoowoo, Inc. to negotiate land acquisition arrangements and cooperative agreements that address the land management needs of both parties. The Committee substitute does not include the H.R. 2596 finding that non-Federal inholdings within the Admiralty Island National Monument should be acquired, but rather finds that acquisitions, through land exchanges or otherwise, may enhance management of the Monument.

SECTION 3. LAND ACQUISITION AND EXCHANGE

Section 3 amends section 506(a) of the ANILCA. It authorizes and directs the Secretary of Agriculture to negotiate and enter into cooperative agreements on land management issues and agreements for land acquisition, through exchange or otherwise, that will enable Kootznoowoo, Inc. to consolidate its holdings and thereby improve the overall administration of the Monument. In recognition of the need to assist Kootznoowoo, Inc. in consolidating its land holdings expeditiously, this section requires the Secretary to make every effort to complete the negotiating process for such agreements within eighteen months. Before the end of that period, the Secretary is directed to report to the appropriate committees of the House and the Senate on the status and results of the negotiations.

Lands on Admiralty Island acquired by the Secretary are to be incorporated into the Monument. Existing authorities to enter into cooperative agreements and land acquisition agreements are specifically not affected by this legislation, and future negotiations under such authorities are not precluded if agreement is not reached pursuant to this section. This legislation does not establish new exchange or acquisition authority, and not private right of action against the United States is created.

The Committee substitute does not adopt the more detailed timetable and the statement of issues and actions to be considered by the Secretary that were included in H.R. 2596. The Committee substitute also does not adopt the H.R. 2596 requirement that all proposals of the Secretary shall lapse if agreement is not reached within one year.

Nothing in this section is intended to delay the processing of land selections made by Kootznoowoo, Inc. Some of those selections were made as early as 1976 but, because of disputes over Admiralty Island lands, did not begin to be conveyed until 1980. Many conveyances still have not been completed. The Federal agencies involved are encouraged to expedite the completion of such conveyances.

SECTION 4. LAND SELECTION CONSOLIDATION

This section amends ANILCA to make possible the consolidation of some of the Kootznoowoo, Inc. land holdings and selections located on Prince of Wales Island. It also will assist in consolidating lands and improving the management of resources administered by the Forest Service. The section provides that lands within the specified timber sale area and lands between such sale area and lands lying to the east thereof that have been or may be conveyed to Kootznoowoo, Inc. and are not otherwise committed by contract, shall be considered by the Secretary for exchange. If an exchange involving such lands is carried out, it is likely that Federal and Kootznoowoo, Inc. parcels can be consolidated, thereby making possible the more efficient use of existing roads and log transfer facilities, improving resource management in the area, and enhancing the benefits to both parties. The Committee substitute requires the Secretary to specifically "consider" this exchange, whereas H.R. 2596 would mandate the exchange, but not its specific terms, if the lands become available.

This section also authorizes the Secretary to require, as a precondition to such an exchange, that any owner of subsurface interests in lands proposed to be transferred consent to the transfer of such estate to the United States for like subsurface interests in the lands that are to be transferred to Kootznoowoo, Inc. Sealaska Corporation, the owner of the subsurface estate in Kootznoowoo, Inc.'s Prince of Wales Island holdings, indicated its agreement to such an arrangement during consideration of the House bill. The purpose of this provision is to avoid creating a split estate between the Native and Federal surface and subsurface estates. The Committee substitute, but not H.R. 2596, expressly protects valid State of Alaska land selections and specifies that no right or cause of action is created by this Section.

SECTION 5. ADMINISTRATIVE PROVISIONS

This section has three elements. First, it changes the name of the "Admiralty Island National Monument Wilderness" to "Kootznoowoo Wilderness." This change will designate the Wilderness with the traditional Tlingit name for Admiralty Island. Translated into English, "Kootznoowoo" means "fortress of the bears." This name will recognize the remarkable concentration of brown bears found on the Island and memorialize the traditional heritage of the ancestral home of the people of Angoon.

Second, this section makes it clear that the conveyance date for Kootznoowoo, Inc.'s land selections shall be January 9, 1981 (changed from December 31, in H.R. 2596), the date on which the Corporation accepted the Admiralty Island Land Exchange under ANILCA through which it received its ANCSA land entitlement. This change is being made for administrative purposes to eliminate the accounting, appraisal, and other administrative problems and expenses that would result if separate dates were used for the several instances on which conveyances were made to Kootznoowoo, Inc.

Finally, the section provides a legislative settlement to litigation between Kootznoowoo, Inc. and the Secretary over the ownership of

the Angoon Administrative Site. This Site has been dedicated by the U.S. Forest Service to uses related to administering the Monument and the Tongass National Forest. Subsection (c) confers on the Secretary all rights, title and interest to a 4.68 acre parcel lying within specified boundaries and specified lands adjacent to the mean high tide line of Kootznahoo Inlet. These lands are to be used as an administrative site under section 506(a)(3)(A) of ANILCA. The remainder of the disputed 17.34 acre tract is to be conveyed to Kootznoowoo, Inc. by quitclaim deed. Subsection (c) also provides that an easement shall be retained by the United States for road utility access. This easement is to be located, to the maximum extent feasible, so as to not interfere with, or encroach upon, existing uses of the lands across which it shall pass. This provision is not included in H.R. 2596.

The Committee substitute does not adopt the H.R. 2596 provision that limits the authority of the Executive Branch to make National Forest boundary changes.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2596. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2596, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of Agriculture setting forth executive agency recommendations relating to H.R. 2596 is set forth below:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, December 7, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department on H.R. 2596, an act "To improve Federal management of lands on Admiralty Island, Alaska."

The Department of Agriculture strongly opposes enactment of H.R. 2596.

We believe many of the bill's purposes can be satisfactorily achieved under existing administrative authorities. The bill would establish several undesirable precedents and increase the complexity and cost of Forest Service management of National Forest System lands on Admiralty Island.

H.R. 2596 would amend section 506(a) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101) to require the Secretary of Agriculture to consult with Kootznoowoo, Inc, regarding cooperative agreements and prepare a study of land exchange options. Should cooperative agreements and exchanges be agreed to, they would have to be approved by Congress. Also, the bill would give Kootznoowoo rights to certain existing Forest Service timber sale areas on Prince of Wales Island in the event outstanding sales are ended. The bill would change the dates on which Kootznoowoo lands would have been deemed granted and would change the name of the Admiralty Island National Monument Wilderness to "Kootznoowoo Wilderness." The authority of the Secretary of Agriculture to make minor boundary adjustments in National Forest Monuments would be revoked.

While the stated intent of H.R. 2596 is to improve Federal management of Admiralty Island, the public interest would not be served by the enactment of this act. We are particularly concerned about the fundamental premise of the findings in section 2(b) endorsing the acquisition of non-Federal inholdings within the Monument. There are substantial private inholdings on Admiralty Island. The over 23,000 acres of land granted Shee Atika by section 506(c), and the Greens Creek mining claim area (a 17,225-acre area of unpatented mining claims located within the Monument but outside the wilderness boundary) are but two of the more controversial examples of private inholdings. (The exploration of Greens Creek was expanded by the January 1986, passage of Public Law 99-235 (99 Stat. 1761)). In addition, there are many Native allotments and other private rights totaling more than 1,800 acres located within the Monument. Compared with these other inholdings in the Monument, Kootznoowoo's lands are not extraordinary nor do they justify special legislation.

The proper pattern of land ownership around Angoon and Mitchell Bay was debated and negotiated during the consideration of section 506(a) of ANILCA. No major problems have arisen that would suggest that Congress should reopen as issue that was ostensibly resolved in 1980. At the insistence of Kootznoowoo, Congress created the 660-foot strip around Kootznahoo Inlet of Mitchell Bay; special management conditions were prescribed to assure resource protection as well as traditional uses. We do not believe that adjustment of the boundaries of the 660-foot strip to conform with the United States Rectangular Survey would enhance the historic shoreline use by the Native people or enhance management of the National Monument. Notwithstanding this, if Kootznoowoo and the Government decided to conform these boundaries, we could accomplish it under existing land exchange authorities.

As noted previously, some of the lands that the Corporation would like the Forest Service to consider for acquisition or exchange are essential to the residents and shareholders who now

have garden plots and other improvements on them, or they may be needed for a community water system. The lands used or planned to be used by the community should not be considered for exchange, since continuation of these uses would be inconsistent with the purposes for which the Monument/Wilderness was established. If such exchanges took place, the areas would likely have to be leased back from the United States in order to maintain traditional uses and develop essential community services. This may not be possible under current authority which does not support development within wilderness areas. Forest Service management of the Admiralty Island National Monument would be complicated rather than enhanced.

Although the Forest Service has not identified any need for additional land around Mitchell Bay, we would certainly consider land exchanges utilizing existing statutory authorities that would facilitate National Monument management and would be beneficial to the corporation. We recently met with Kootznoowoo representatives to discuss potential land exchanges, and we believe there is a positive basis for proceeding with negotiations.

We feel that H.R. 2596 is unnecessary. Section 1302(h) of ANILCA expressly authorizes land exchanges within Conservation System Units which would further the purposes of the Conservation System Unit. Most Forest Service land exchanges are already submitted for congressional oversight review. The proposed congressional approval of all exchanges and cooperative agreements involved with Kootznoowoo would create an additional burden on all involved parties and significantly increase the time to complete these transactions. We believe there is adequate authority under ANILCA and the Alaska Natives Claims Settlement Act (ANCSA) to develop cooperative agreements and conduct land exchanges, and there is ample congressional oversight of the process.

We strongly object to Section 5(a) of H.R. 2596 which would grant Kootznoowoo preferential rights to the Lancaster Cove-Kitkun Bay Timber Sale. The original purchaser of that sale is currently involved in Chapter 11 bankruptcy proceedings. It would be inappropriate to interfere with that proceeding until the court has acted. Although H.R. 2596 attempts to address this concern, the very existence of such legislation could influence decisions made by the bankruptcy court. Furthermore, there is significant interest in the 46.6 million-board-foot sale among other independent purchasers of National Forest timber who would provide the timber for domestic processing in southeast Alaska sawmills. If Kootznoowoo acquired this timber, it would become available for export without primary processing.

With reference to section 6(b), we do not understand the purpose or intent of changing the effective conveyance date of lands granted to Kootznoowoo in section 506(a). In April, we wrote Kootznoowoo's legal counsel asking for a written explanation of this provision, but to date have not received a specific written answer. However, we understand that this may have tax implications and is ostensibly to facilitate management of the Corporation's lands.

Thus far, the proponents of this provision have not provided specific reasons for its enactment, and there has also been a lack of expert analysis as to its impacts. The Department of Agriculture does not have expertise in tax issues, but it seems to us that an

analysis of impacts on revenues is essential before the public interest of such a provision can be assessed. Congress should also appreciate that, like Kootznوو, other Native corporations have received conveyances of their entitlement on different dates, and this provision would be a precedent for other requests.

If Congress enacts retroactive conveyance dates for this or other corporations, there is a potential for affecting third party rights. Such third party rights might result from an entry under the mining or public land laws or from some administrative action such as a right of way permit, timber sale, or other authorization to use Federal land. If someone had a right or authorization after a date arbitrarily established by statute but prior to the actual date of conveyance, the effect of a retroactive date could be to cut off such a right or authorization thereby exposing the United States to a taking claim. Considering all the potential implications of setting arbitrary retroactive conveyance dates, we strongly recommend this not be done in this case.

We strongly object to Section 8 which would withdraw the Secretary of Agriculture's authority to make minor boundary adjustments to National Forest Monuments. Without this authority, each minor adjustment would require separate legislation.

In summary, H.R. 2596 is not needed and would not facilitate management of the National Monument. We believe it would create an undesirable precedent regarding land ownership adjustments in Alaska. We would be happy to provide any additional information you desire.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD E. LYNG, *Secretary.*

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of Senate, changes in existing law made by the Act, H.R. 2596, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

* * * * *

SEC. 506 (a)(5) * * *

(C) In order to consolidate Federal land ownership and improve management of land and timber resources in the area, lands within the sale area and lands between such sale area and lands lying to the east of such sale area which have been or may be conveyed to Kootznوو pursuant to this paragraph (5), and not otherwise committed by contract, shall be specifically considered by the Secretary for exchange with Kootznوو, Incorporated. Nothing in this section shall affect valid land selections which the State of Alaska has filed with the Federal Government under Public Law 85-508.

(D) *The Secretary of Agriculture may require as a condition precedent to any exchange of lands with Kootznoowoo, Incorporated, pursuant to this Act that any party (other than the United States) owning the subsurface estate in lands proposed to be transferred to the United States by Kootznoowoo, Incorporated, in furtherance of such exchange agree to transfer such subsurface estate to the United States in exchange for the subsurface estate in the lands proposed to be transferred to Kootznoowoo, Incorporated, in furtherance of such exchange.*

(E) *Any transfers pursuant to subparagraphs (C) and (D) of this paragraph shall be subject to valid existing rights.*

Nothing in subparagraphs (C) and (D) shall create a right or cause of action by Kootznoowoo, Incorporated, or any other party against the United States.

SEC. 506. (a) * * *

(9)(A) *The Secretary is authorized and directed to: Enter into such cooperative agreements and agreements for land acquisitions, through exchange or otherwise, with Kootznoowoo as are deemed necessary by the Secretary to carry out the purposes specified in sections 101 and 503 of this Act and to improve the management of Federal lands on Admiralty Island.*

(B) *The Secretary shall make every effort to complete agreements within eighteen months of the date of enactment of this paragraph.*

(C) *The Secretary shall report to Congress before the end of such eighteen-month period on the status and results of negotiations with Kootznoowoo. The report shall include, but not be limited to, any Kootznoowoo properties proposed to be acquired by the United States, and Federal lands or other compensation to be offered in exchange, and the text of any proposed or executed agreements.*

(D) *Any lands on Admiralty Island acquired by the United States pursuant to this paragraph shall be added to and incorporated within the Admiralty Island National Monument.*

(E) *The inability of the Secretary and Kootznoowoo to reach agreement shall not preclude subsequent negotiations at any time for the purposes of land exchanges or other matters.*

(F) *Enactment of this paragraph shall not create any right or cause of action by Kootznoowoo, Incorporated, or any other party against the United States.*

* * * * *

DESIGNATION OF WILDERNESS WITHIN NATIONAL FOREST SYSTEM

SEC. 703. (a) In accordance with subsection 3(c), of the Wilderness Act (78 Stat. 892), the public lands within the Tongass National Forest within the boundaries depicted as "Proposed Wilderness" on the maps referred to in the following paragraphs are hereby designated as wilderness, with the nomenclature and approximate acreage as indicated below:

(1) **[Admiralty Island National Monument Wilderness]**
Kootznoowoo Wilderness of approximately nine hundred thousand acres, as generally depicted on a map entitled "Admiralty Island Wilderness", dated July 1980;

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